**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 2251 OF 2005**

Jatin Ashok Khandwala ...Petitioner

Versus

State of Maharashtra & Anr ...Respondents

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Mr. Vivek Kantawala i/b Vivek Kantawala & Co. Advocate for Petitioner

Mr. A.H.H. Ponda, Adv. for Respondent No.2.

Mr. Y.S. Shinde, A.P.P. for State.

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**CORAM: SMT. V.K. TAHILRAMANI, J.**

**DATED: 21ST SEPTEMBER, 2005**

**P. C.:-**

1. Heard the learned advocate for the petitioner i.e. original accused No.2, the learned advocate for the respondent No.2 i.e. original complainant and the learned A.P.P. for the State.

2. The petitioner is facing prosecution in a case under Section 138 of Negotiable Instruments Act. The said case is numbered as C.C. No. 1402/SS/2003 and is pending before the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.

3. It is submitted on behalf of the petitioner that

after the statement of the accused under 313 of Cr.P.C. was recorded, an application came to be preferred by the present petitioner stating that he wishes to examine as defence witnesses accused No.2 (petitioner), one Alkaben Shah a finance broker and an Officer of the Income Tax, Range (II) in order to produce Income Tax Returns of the complainant for the period from 2000 to 2003. It is the case of the petitioner that the annexures and/or balance sheet, copies of which have been produced as evidence by the complainant, do not bear any endorsement or acknowledgement of the Income Tax authority. It is his case that these annexures are fabricated and forged and there were reasonable grounds to believe that there were no such annexures filed or submitted to the Income Tax authorities.

4. By order dated 17.08.2005, the learned Magistrate allowed the application of the petitioner in respect of examining the petitioner and Smt. Alkaben Shah as defence witnesses. However, the prayer for examining an Officer of the Income Tax was rejected. Being aggrieved thereby this petition has been preferred.

5. In the present case it is pertinent to note that in the statement of the accused under Section 313 of Cr.P.C. the accused has not denied that loan had been advanced by the complainant to accused No.1.

Moreover, P.W.3 Sudha Somsundaram who is Inspector in the Income Tax Department has been examined in respect of the Income Tax returns of the petitioner (original accused No.2). The evidence of this witness shows that an amount of Rs.9.00 lakhs is shown to be due and payable to the complainant by accused No.1. The amount of the cheque in question is Rs.9.00 lakhs. In such case, in my opinion, calling an Income Tax Officer in relation to the account of the complainant would not serve any fruitful purpose as the accused have not denied giving of loan by the complainant.

6. Assuming that the complainant has not followed any provision of Income Tax Act, obviously the concerned authorities would take appropriate steps against the complainant and the petitioner cannot be punished for violation of that act in this proceeding.

7. In my view, for the purpose of fair trial in this case, it would not be necessary to examine an Income Tax Officer in relation to the account of the complainant. The learned Magistrate has taken all these aspects into consideration and has thereafter rejected the application. No interference is called for. Petition is rejected.

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